

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2621

Introduced by Assembly Member Strickland

February 24, 2006

An act to ~~amend Sections 6011 and 6012 of~~ *add Section 6353.5 to* the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2621, as amended, Strickland. Sales and use taxes: exemption: ~~fuel taxes gasoline.~~

~~The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.~~

~~This bill would provide, for purposes of that law, that the terms “sales price” and “gross receipts” do not include the amount of any state and federal fuel taxes, as specified.~~

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax.

This bill would provide an additional exemption for motor vehicle fuel, as defined.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made ~~and the state shall not~~ to reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill. *This bill would declare the Legislature's intent to make that reimbursement, pursuant to a subsequent bill.*

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6353.5 is added to the Revenue and*
- 2 *Taxation Code, to read:*
- 3 *6353.5. There are exempted from the taxes imposed by this*
- 4 *part, the gross receipts from the sale in this state of, and the*
- 5 *storage, use, or other consumption in this state of, motor vehicle*
- 6 *fuel, as defined by Section 7304.*
- 7 *SEC. 2. Notwithstanding Section 2230 of the Revenue and*
- 8 *Taxation Code, no appropriation is made by this act to reimburse*
- 9 *any local agency for any sales and use tax revenues lost by it*
- 10 *under this act. However, the Legislature declares its intent to*
- 11 *make that reimbursement pursuant to a subsequent act.*
- 12 *SEC. 3. This act provides for a tax levy within the meaning of*
- 13 *Article IV of the Constitution and shall go into immediate effect.*
- 14 *However, the provisions of this act shall become operative on the*
- 15 *first day of the first calendar quarter commencing more than 90*
- 16 *days after the effective date of this act.*
- 17 ~~SECTION 1. Section 6011 of the Revenue and Taxation~~
- 18 ~~Code is amended to read:~~
- 19 ~~6011. (a) "Sales price" means the total amount for which~~
- 20 ~~tangible personal property is sold or leased or rented, as the case~~

1 may be, valued in money, whether paid in money or otherwise,
2 without any deduction on account of any of the following:

3 (1) ~~The cost of the property sold.~~

4 (2) ~~The cost of materials used, labor or service cost, interest
5 charged, losses, or any other expenses.~~

6 (3) ~~The cost of transportation of the property, except as
7 excluded by other provisions of this section.~~

8 (b) ~~The total amount for which the property is sold or leased or
9 rented includes all of the following:~~

10 (1) ~~Any services that are a part of the sale.~~

11 (2) ~~Any amount for which credit is given to the purchaser by
12 the seller.~~

13 (e) ~~“Sales price” does not include any of the following:~~

14 (1) ~~Cash discounts allowed and taken on sales.~~

15 (2) ~~The amount charged for property returned by customers
16 when that entire amount is refunded either in cash or credit, but
17 this exclusion shall not apply in any instance when the customer,
18 in order to obtain the refund, is required to purchase other
19 property at a price greater than the amount charged for the
20 property that is returned. For the purpose of this section, refund
21 or credit of the entire amount shall be deemed to be given when
22 the purchase price less rehandling and restocking costs are
23 refunded or credited to the customer. The amount withheld for
24 rehandling and restocking costs may be a percentage of the sales
25 price determined by the average cost of rehandling and
26 restocking returned merchandise during the previous accounting
27 cycle.~~

28 (3) ~~The amount charged for labor or services rendered in
29 installing or applying the property sold.~~

30 (4) (A) ~~The amount of any tax (not including, however, any
31 manufacturers’ or importers’ excise tax, except as provided in
32 subparagraph (B)) imposed by the United States upon or with
33 respect to retail sales whether imposed upon the retailer or the
34 consumer.~~

35 (B) ~~The amount of manufacturers’ or importers’ excise tax
36 imposed pursuant to Section 4081 or 4091 of the Internal
37 Revenue Code for which the purchaser certifies that he or she is
38 entitled to either a direct refund or credit against his or her
39 income tax for the federal excise tax paid or for which the
40 purchaser issues a certificate pursuant to Section 6245.5.~~

1 ~~(5) The amount of any tax imposed by any city, county, city~~
2 ~~and county, or rapid transit district within the State of California~~
3 ~~upon or with respect to retail sales of tangible personal property;~~
4 ~~measured by a stated percentage of sales price or gross receipts,~~
5 ~~whether imposed upon the retailer or the consumer.~~

6 ~~(6) The amount of any tax imposed by any city, county, city~~
7 ~~and county, or rapid transit district within the State of California~~
8 ~~with respect to the storage, use or other consumption in that city,~~
9 ~~county, city and county, or rapid transit district of tangible~~
10 ~~personal property measured by a stated percentage of sales price~~
11 ~~or purchase price, whether the tax is imposed upon the retailer or~~
12 ~~the consumer.~~

13 ~~(7) Separately stated charges for transportation from the~~
14 ~~retailer's place of business or other point from which shipment is~~
15 ~~made directly to the purchaser, but the exclusion shall not exceed~~
16 ~~a reasonable charge for transportation by facilities of the retailer~~
17 ~~or the cost to the retailer of transportation by other than facilities~~
18 ~~of the retailer. However, if the transportation is by facilities of~~
19 ~~the retailer, or the property is sold for a delivered price, this~~
20 ~~exclusion shall be applicable solely with respect to transportation~~
21 ~~which occurs after the purchase of the property is made.~~

22 ~~(8) Charges for transporting landfill from an excavation site to~~
23 ~~a site specified by the purchaser, either if the charge is separately~~
24 ~~stated and does not exceed a reasonable charge or if the entire~~
25 ~~consideration consists of payment for transportation.~~

26 ~~(9) The amount of any motor vehicle, mobilehome, or~~
27 ~~commercial coach fee or tax imposed by and paid the State of~~
28 ~~California that has been added to or is measured by a stated~~
29 ~~percentage of the sales or purchase price of a motor vehicle,~~
30 ~~mobilehome, or commercial coach.~~

31 ~~(10) (A) The amount charged for intangible personal property~~
32 ~~transferred with tangible personal property in any technology~~
33 ~~transfer agreement, if the technology transfer agreement~~
34 ~~separately states a reasonable price for the tangible personal~~
35 ~~property.~~

36 ~~(B) If the technology transfer agreement does not separately~~
37 ~~state a price for the tangible personal property, and the tangible~~
38 ~~personal property or like tangible personal property has been~~
39 ~~previously sold or leased, or offered for sale or lease, to third~~
40 ~~parties at a separate price, the price at which the tangible~~

1 ~~personal property was sold, leased, or offered to third parties~~
2 ~~shall be used to establish the retail fair market value of the~~
3 ~~tangible personal property subject to tax. The remaining amount~~
4 ~~charged under the technology transfer agreement is for the~~
5 ~~intangible personal property transferred.~~

6 ~~(C) If the technology transfer agreement does not separately~~
7 ~~state a price for the tangible personal property, and the tangible~~
8 ~~personal property or like tangible personal property has not been~~
9 ~~previously sold or leased, or offered for sale or lease, to third~~
10 ~~parties at a separate price, the retail fair market value shall be~~
11 ~~equal to 200 percent of the cost of materials and labor used to~~
12 ~~produce the tangible personal property subject to tax. The~~
13 ~~remaining amount charged under the technology transfer~~
14 ~~agreement is for the intangible personal property transferred.~~

15 ~~(D) For purposes of this paragraph, "technology transfer~~
16 ~~agreement" means any agreement under which a person who~~
17 ~~holds a patent or copyright interest assigns or licenses to another~~
18 ~~person the right to make and sell a product or to use a process~~
19 ~~that is subject to the patent or copyright interest.~~

20 ~~(11) The amount of any tax imposed upon diesel fuel pursuant~~
21 ~~to Part 31 (commencing with Section 60001).~~

22 ~~(12) (A) The amount of tax imposed by any Indian tribe~~
23 ~~within the State of California with respect to a retail sale of~~
24 ~~tangible personal property measured by a stated percentage of the~~
25 ~~sales or purchase price, whether the tax is imposed upon the~~
26 ~~retailer or the consumer.~~

27 ~~(B) The exclusion authorized by subparagraph (A) shall only~~
28 ~~apply to those retailers who are in substantial compliance with~~
29 ~~this part.~~

30 ~~(13) The amount of any tax imposed under Part 2~~
31 ~~(commencing with Section 7301) or Part 31 (commencing with~~
32 ~~Section 60001) and the amount of any tax imposed under Section~~
33 ~~4081 of the Internal Revenue Code.~~

34 ~~SEC. 2. Section 6012 of the Revenue and Taxation Code is~~
35 ~~amended to read:~~

36 ~~6012. (a) "Gross receipts" mean the total amount of the sale~~
37 ~~or lease or rental price, as the case may be, of the retail sales of~~
38 ~~retailers, valued in money, whether received in money or~~
39 ~~otherwise, without any deduction on account of any of the~~
40 ~~following:~~

~~(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.~~

~~(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.~~

~~(3) The cost of transportation of the property, except as excluded by other provisions of this section.~~

~~(b) The total amount of the sale or lease or rental price includes all of the following:~~

~~(1) Any services that are a part of the sale.~~

~~(2) All receipts, cash, credits and property of any kind.~~

~~(3) Any amount for which credit is allowed by the seller to the purchaser.~~

~~(c) "Gross receipts" do not include any of the following:~~

~~(1) Cash discounts allowed and taken on sales.~~

~~(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.~~

~~(3) The price received for labor or services used in installing or applying the property sold.~~

~~(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with~~

1 respect to retail sales whether imposed upon the retailer or the
2 consumer.

3 (B) The amount of manufacturers' or importers' excise tax
4 imposed pursuant to Section 4081 or 4091 of the Internal
5 Revenue Code for which the purchaser certifies that he or she is
6 entitled to either a direct refund or credit against his or her
7 income tax for the federal excise tax paid or for which the
8 purchaser issues a certificate pursuant to Section 6245.5.

9 (5) The amount of any tax imposed by any city, county, city
10 and county, or rapid transit district within the State of California
11 upon or with respect to retail sales of tangible personal property
12 measured by a stated percentage of sales price or gross receipts
13 whether imposed upon the retailer or the consumer.

14 (6) The amount of any tax imposed by any city, county, city
15 and county, or rapid transit district within the State of California
16 with respect to the storage, use or other consumption in that city,
17 county, city and county, or rapid transit district of tangible
18 personal property measured by a stated percentage of sales price
19 or purchase price, whether the tax is imposed upon the retailer or
20 the consumer.

21 (7) Separately stated charges for transportation from the
22 retailer's place of business or other point from which shipment is
23 made directly to the purchaser, but the exclusion shall not exceed
24 a reasonable charge for transportation by facilities of the retailer
25 or the cost to the retailer of transportation by other than facilities
26 of the retailer. However, if the transportation is by facilities of
27 the retailer, or the property is sold for a delivered price, this
28 exclusion shall be applicable solely with respect to transportation
29 which occurs after the sale of the property is made to the
30 purchaser.

31 (8) Charges for transporting landfill from an excavation site to
32 a site specified by the purchaser, either if the charge is separately
33 stated and does not exceed a reasonable charge or if the entire
34 consideration consists of payment for transportation.

35 (9) The amount of any motor vehicle, mobilehome, or
36 commercial coach fee or tax imposed by and paid to the State of
37 California that has been added to or is measured by a stated
38 percentage of the sales or purchase price of a motor vehicle,
39 mobilehome, or commercial coach.

1 ~~(10) (A) The amount charged for intangible personal property~~
2 ~~transferred with tangible personal property in any technology~~
3 ~~transfer agreement, if the technology transfer agreement~~
4 ~~separately states a reasonable price for the tangible personal~~
5 ~~property.~~

6 ~~(B) If the technology transfer agreement does not separately~~
7 ~~state a price for the tangible personal property, and the tangible~~
8 ~~personal property or like tangible personal property has been~~
9 ~~previously sold or leased, or offered for sale or lease, to third~~
10 ~~parties at a separate price, the price at which the tangible~~
11 ~~personal property was sold, leased, or offered to third parties~~
12 ~~shall be used to establish the retail fair market value of the~~
13 ~~tangible personal property subject to tax. The remaining amount~~
14 ~~charged under the technology transfer agreement is for the~~
15 ~~intangible personal property transferred.~~

16 ~~(C) If the technology transfer agreement does not separately~~
17 ~~state a price for the tangible personal property, and the tangible~~
18 ~~personal property or like tangible personal property has not been~~
19 ~~previously sold or leased, or offered for sale or lease, to third~~
20 ~~parties at a separate price, the retail fair market value shall be~~
21 ~~equal to 200 percent of the cost of materials and labor used to~~
22 ~~produce the tangible personal property subject to tax. The~~
23 ~~remaining amount charged under the technology transfer~~
24 ~~agreement is for the intangible personal property transferred.~~

25 ~~(D) For purposes of this paragraph, “technology transfer~~
26 ~~agreement” means any agreement under which a person who~~
27 ~~holds a patent or copyright interest assigns or licenses to another~~
28 ~~person the right to make and sell a product or to use a process~~
29 ~~that is subject to the patent or copyright interest.~~

30 ~~(11) The amount of any tax imposed upon diesel fuel pursuant~~
31 ~~to Part 31 (commencing with Section 60001).~~

32 ~~(12) (A) The amount of tax imposed by any Indian tribe~~
33 ~~within the State of California with respect to a retail sale of~~
34 ~~tangible personal property measured by a stated percentage of the~~
35 ~~sales or purchase price, whether the tax is imposed upon the~~
36 ~~retailer or the consumer.~~

37 ~~(B) The exclusion authorized by subparagraph (A) shall only~~
38 ~~apply to those retailers who are in substantial compliance with~~
39 ~~this part.~~

1 For purposes of the sales tax, if the retailers establish to the
2 satisfaction of the board that the sales tax has been added to the
3 total amount of the sale price and has not been absorbed by them,
4 the total amount of the sale price shall be deemed to be the
5 amount received exclusive of the tax imposed. Section 1656.1 of
6 the Civil Code shall apply in determining whether or not the
7 retailers have absorbed the sales tax.

8 (13) The amount of any tax imposed under Part 2
9 (commencing with Section 7301) or Part 31 (commencing with
10 Section 60001) and the amount of any tax imposed under Section
11 4081 of the Internal Revenue Code.

12 SEC. 3. Notwithstanding Section 2230 of the Revenue and
13 Taxation Code, no appropriation is made by this act and the state
14 shall not reimburse any local agency for any sales and use tax
15 revenues lost by it under this act.

16 SEC. 4. This act provides for a tax levy within the meaning of
17 Article IV of the Constitution and shall go into immediate effect.
18 However, the provisions of this act shall become operative on the
19 first day of the first calendar quarter commencing more than 90
20 days after the effective date of this act.